





THE DAILY NEWS.

The Official Organ of the City.

SUNDAY, OCTOBER 19, 1873.

THE DAILY NEWS is the Only Paper in the City of Raleigh that takes the Telegraphic Reports.

JOHN D. CAMERON, Editor.

JORDAN STONE, Associate Editor.

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No letter can be published in these columns which is not authenticated by the name of its author. This we require, not for publication, but as a guarantee of the good faith of our correspondents. Persons who violate this rule will have their communications consigned to the waste-basket.

THE WEEKLY NEWS is the cheapest paper published in North Carolina. It is only one dollar per annum, postage paid, contains 32 columns of plain printed news from every section of the country, and important advertisements. Always Cash.

We are sure that the work of the Convention will be approved by the people, since that work embraces economy, as much as a recognition of the rights of the people.

The Press throughout the State endorses the stand taken by the News on the subject of decorum in the Convention. The Democrats have not departed from the rules of propriety. The Republicans have, and upon them rests all the responsibility of delay and disorder.

COUNTY GOVERNMENTS.

We are pleased to say that an ordinance passed by the Convention places it in the power of the Legislature to regulate a power which has been the subject of much abuse, and consequently the cause of well founded complaint from the East. The East, representing a large proportion of the Democratic vote of the State, prevents itself as under law. It is so. For the East is trampled on and crushed under the weight of an ignorant negro majority. But the time of relief has come, and the Convention has given such relief as was needed. The East may now apply the remedy without conflicting with any rights the rest may choose to preserve.

THE WILSON ADVANCE thus speaks of the Convention: "The Democratic members have demeaned themselves with honor and credit. Their conduct has been distinguished by the highest degree of harmony, good order and dignity. On the other hand, the Radicals, with few exceptions, have shown the cloven foot of rowdiness and unprincipled lawlessness. They have thrown every impediment in the way of business, and by their factious conduct prolonged the session beyond the time necessary to consummate the object for which the Convention was called. Their motive has been to clog instead of to advance the proceedings. They hope to make capital by increasing the expenses of the Convention but their scheme has been too transparent to deceive any one, and they will be held responsible for their disgraceful proceedings before the people."

THE ELECTION IN OHIO NEXT TUESDAY.

We copy the following from the Cincinnati Enquirer of Wednesday morning in relation to the election in that State on Tuesday next:

"By a preconcerted movement, suggested by the bondholders of Wall street, the dung-hill roosters owned by the bondocracy began to flap their clumsy wings and crow, as if ready to fight and confident of victory; and, although this little game was commenced only two weeks ago, it is already played out, and the ignoble fowl has slunk back to the barn-yard, cowed and whipped, while upon extended wings old Gray Eagle sweeps over the field, and whenever he is seen is hailed by the cheers and plaudits of his countrymen. It is the people's will that Allen shall be re-elected Governor, and their will is the will of God. The result is as certain as though all the 40,000 majority were already proclaimed from the polls, and, in advance, we announce the result. There is not a county, there is not a town or city, a township, school district or ward in the whole State in which the Democracy have not gained votes; while there is not a county, city, town, township, ward or school district in all Ohio in which we have lost one vote. Last year we carried the State by 18,000 majority, and since then we have gained fully 20,000 Republican votes. Democratic victory is inevitable."

THE OHIO ELECTION.

On Tuesday Ohio winds up her active and vigorous political campaign with her election for State officers.

The Richmond Dispatch says the campaign has been one of the most spirited and able ones that has ever been conducted in the State. That old man of wonderful endurance and physical and mental force, Governor Allen, has acquitted himself in a style perhaps unprecedented. He is a man of powerful voice and strong intellect. He never missed an appointment, and never failed to be heard. He has made proverbial the phrase "fog-horn," once used by himself, and to which his voice has been aptly compared. He has performed feats of public speaking that will fully acquit him of any charge of delinquency if the State is lost to the Democrats.

The argumentation on both sides has been presented with all sorts of variations. From Schurz's polished rhetoric to Morton's "bloody shirt" the Republicans have essayed to call back stragglers and reform their party. Governor Allen has battered the Radical ramparts by his strong common sense and his vigorous enumeration of the corruptions and outrages of the Radical Government. Pendleton, in his impetuous style, has leaped over the fortifications and driven the enemy before him. Kelley and Currin, from Pennsylvania, have reinforced the Ohio orators and the whole ground has been well gone over.

As to the result, we are not over sanguine; but we shall nevertheless be disappointed if Ohio does not give the Democrats a victory.

There was a strong effort at the beginning of the campaign to give the foremost place to a sectarian issue, but to a great extent it failed. The public showed too deep an interest in the currency question, and that and the corruptions of the Government were almost exclusively the issues of the battle.

But if Ohio goes Republican, what then? It will be the commencement of trouble. The *edit* will be monopolized by Grant. He will be sure to think it his "long speech" that did it; just as the lunatic imagined that a storm at sea, in which several vessels were lost was caused by his whistling.

The result will be construed into a grand triumph for Grant and the "third term." Your Blaines, and Dawses, and Wilsons, and such, will sink a little lower, and all the Republican opposers of the "third term" will find that their work has to be done over again. They will learn how hard it is to fight the power and patronage of the President. The victory will be one which the Republican party may see good reason to deplore.

But, still, we have faith in Ohio, and believe that the Radicals will be saved from such trouble.

The Tenure of the Judicial Term of Office: An Able Opinion from Hon. B. F. MOORE.

We give pleasure with pleasure to the following opinion from the Hon. B. F. Moore in regard to the tenure of the judicial term of office:

RALEIGH, N. C., Oct. 9, 1873.

DR. SAMUEL L. LOVE:

Dear Sir:—I have your requesting me to write out my views as expressed to you in your recent call on me as "an old and valued friend of your own family."

The subject was in regard to the tenure of the judicial term of office. I have given my opinion fully to you, and in accordance with your request I have written it out for you, with some enlargement.

Very truly yours,

B. F. MOORE.

OPINION OF HON. B. F. MOORE.

It is now and for more than a century has been an established principle in the English government, that the legislative, executive, and judicial departments of government should be kept separate and distinct, and be independent of each other in its action.

About two centuries ago owing to the fact that the judges were appointed by the executive—the king—and removable at his pleasure, it was very easy, and in the reign of despots it was very common, for the executive to control the judiciary by the removal of judges who would not yield their decisions to his will, and the substitution of others who would. With such removal, the salary, dignity and influence of the judge passed away; and a new one consequent to the will of the king succeeded and executed his purpose.

Instances of this depravity were common all the great revolution of 1688, when the patriots of that day obtained from the successors of the deposed James II., an act of parliament securing to the judge a term of office during the entire reign of the king bestowing it. This was regarded as a great boon, and was in fact a most invaluable security for the independence of the judiciary. But on this king's death the judge's office became vacant at the end of six months after the coming of age of the new king, and it was very natural that the judge whose office was on the eve of termination, should look about and be watchful to court the favor of the new reigning king; and so it was; and as also often became the judicial tool of that king. The independent judge was not yet secured, but a grand step was made towards this desirable end.

For a period of sixty-five years the tenure of office continued to be indefinite in term. In 1760 it was fixed by parliament, and the term of office was made independent of the king, and to continue during the good behavior of the judge, notwithstanding the demise of the king.

This was regarded as the greatest achievement of liberty during the

age; and was so considered, as well in the colonies, as in the mother country.

Our revolution of 1776 happened while this great political security for the protection of the liberty, rights and property was in full force, and was the great favorite champion of every liberty on both sides of the water; and in the formation of our constitution of 1789, it was the Federalist, the grand Doric pillar of that instrument by Art. 3, Sec. 1, that the judges, both of the Supreme and inferior Courts, shall hold their offices during good behavior; and shall, at stated times receive for their services, a compensation, which shall not be diminished during their continuance in office.

Ever since the adoption of this Constitution, through all the strifes of partisan warfare, this provision has remained the unmovable pillar of the union.

In the eloquent language of John Rutledge, the eminent statesman of South Carolina, in the celebrated debate of 1802, "The Judiciary is, in the fabric of the Constitution, a pillar not any ornament added by Congress."

"It is, sir, the grand Doric; one of three foundation pillars, formed not by Congress, but by the people themselves; and which together the abutment, is laid in the foundation of the late fabric of our government, and if you demolish it, the grand arch itself will totter and the whole be endangered."

"We are asked by gentlemen if the people want Judges to protect them? Yes, sir, in popular governments constitutional checks are necessary to carry their preservation; the people want to be protected against themselves; no man is so absurd as to suppose the people collectively will consent to the destruction of their liberties; if they are not shielded by some constitutional checks they will suffer them to be destroyed; to be destroyed by demagogues, who flatter the confidence of the people by pretending to be their friends; demagogues who, at the time they are soothing and cajoling the people with bland and captivating speeches, are forging chains for them; demagogues who carry out their designs and artful devices in their hypocritical faces; who are dooming the people to despotism, when they profess to be exclusively the friends of the people."

"Against such designs and artful devices our constitutional checks made to preserve the people of this country."

In the year 1833, the great statesman, Daniel Webster, in discussing the proposed amendments to the Constitution of Massachusetts, said, "I know not whether a greater improvement has been made in government than that which has been made in the executive and legislative branches, and to provide for the decision of private rights in a manner wholly uninfluenced by reasons of State, or considerations of party or of policy."

"It is the glory of the British Constitution to have led in the establishment of this most important principle."

"It did not exist in England before the Revolution from 1688, and its introduction, has seemed to give a new character to the tribunals."

It is not necessary to state the evils which have been experienced in that country from dependent and thus-serving Judges."

"The judiciary is composed of few persons, and those not such as mix habitually in the pursuits and occupations of the people. They are not, or ever should be, political men. They have often unpleasant duties to perform, and their opinions, in matters which are public, must, in constant contact with others, and with their constituents. It would seem to be plain enough, that without constitutional provisions which should be fixed and certain, such a department, in case of excitement, would be able to encroach on the judiciary."

Therefore it is, that a security of judicial independence becomes necessary."

"The judge is bound by his oath to decide according to law. The constitution is the supreme law. Any act of the legislature, therefore, inconsistent with that supreme law, must yield to it; and any judge, seeing this inconsistency, and yet giving effect to the law, would violate both his duty and his oath."

"But it is evident that this power, to be useful, must be lodged in independent hands."

"If the legislature may remove judges at pleasure, assigning no cause for removal, of course it is not to be expected that they would often find decisions against the constitutionality of their own acts. If the legislature should, on any point, be in a temper to do a violent thing, it would probably take care to see that the bench of justice was so constituted as to agree with it in opinion."

"There is nothing after all, so important to individuals as the upright administration of justice."

"This comes home to every man; his liberty, his property, all depend on this. No government does its duty to the people, which does not make ample and stable provisions for the exercise of this part of its power. No duty more sacred than that of courts which will deal justly with mere private questions. We look to the judicial tribunal for protection against illegal or unconstitutional acts from whatever quarter they may proceed."

"The courts of law, independent judges, and enlightened juries are the temples of private justice."

It will be observed, that while the official term of a judge may be indefinite, still the judge himself may be made to yield to it, as if he were paid, or paid with uncertainty, as if he were a candidate for the judiciary, and thus subject to the changes of party rule."

Hence the wise provision in the constitution of the United States that all its judges shall not only "hold their offices during good behavior," but shall receive for their services a compensation which shall not be diminished during their continuance in office."

A similar provision exists and has long existed, in our own constitution."

Under these provisions that the term of office shall continue during good behavior, and the salary then fixed shall endure through the term, a candidate for the judiciary can plainly see what he may rely on; and if the salary place him beyond the reach of want he may safely with-

draw from all political aspirations, all political strifes and all other engagements except those which appertain to his legal profession and pursue that with the only ambition which can distinguish him, which necessarily is to improve his knowledge of the law."

The experience of a century in this State and still longer period in England have conclusively proved that such will be generally the uniform result of the conduct of a judge thus secured in the tenure and salary of his office. Exceptions may occur. The judge may misbehave and he may become incapable through mental or physical inability to discharge the duties of his office."

Another provision against each and all of these occurrences existed in our constitution prior to that of 1868. But under this latter constitution there is no provision against mental or physical inability. This is a gross omission; for neither calamity is an impeachable offense. A reliable judiciary exists only when the upright judge is secure in his office, as to the continuation and its compensation."

He is then quiet and fixed. A judiciary of quiet tenure of office can not be reliable. A judge cannot act like an ordinary laborer, who may go from one field to another and change his labor without loss or compensation. That we may fully comprehend what will be the usual results of elections for short terms, let us take an example and pursue it in its natural sequences and details. A lawyer, after practicing ten years and assiduously devoting himself to his profession, offers himself as a candidate for a judgeship for the term of six or eight years, and is elected with a salary just large enough to support himself comfortably. If he has succeeded well at the bar, and has acquired reputation, he will commence his career as judge; free of cases and troubles. In all probability before his term ends he will be married, and he will have a family. Now what will be the self-communings of that man, when he shall have served until a year or two before the end of his term, and looks about him and finds there are competitors for his office? He is encumbered with a wife and family of children, who must be respectably supported, and his children be educated. His re-election is doubtful even with his greatest efforts. His former range of practice is absorbed by members of the bar, who succeeded him on his election. If he be beaten in the official contest before him, he must go back to the bar and commence practice anew. He cannot expect even with great industry, that his practice will return, except slowly, and after much labor and delay; during which time he will have to support a family without a salary and under a burdensome expense. In the mean time, as the expiration of his term approaches, if he neglected to seek popular favor he will be accounted unsocial and haughty."

This is a distressing condition in which to place any man. On one hand lies a comfortable office with the reward of a beautiful salary for six or eight years more, and a happy family living on its income. On the other, no office and no salary; and no livelihood, save the prospect of fees from a return to the practice of law in a field now filled by his successful competitors with a struggle for an uncertain share of the income which he once monopolized. How bright is the view! he glances and the other!

The natural outcome of feeling of the judge will be, "How shall I keep my office?" He sees at once, that the only means to secure the vote of the electors is the same case as was presented to him, as was presented to the judge, who could only keep his office by the favor of the king. "Mankind is the same in every age," and what which shows the English judge would do for the king, in order to secure his office; our own history shows what the elective judge will do for influential suitors, in order to obtain their votes and their influence in securing his re-election. "The door through which power can operate over the voter will be thrown open, and the corrupt influences of money, political patronage, and favoritism to popular suitors will lead the successful party."

The poor and obscure suitor, in such a controversy with a popular factor, would be treated and regarded by the short-term judge as was the subject, by a royal judge cringing for continuance of office at the hands of the king, before the great revolution of 1688."

In the language of the eloquent statesman, Rutledge, the "confiding people will be destroyed by demagogues, who flatter the confidence of the people by pretending to be their friends; who are dooming the people to despotism, when they profess to be exclusively the friends of the people."

In the language of Daniel Webster "it is evident that this power, to be useful, must be lodged in independent hands; and in the language of Alexander Hamilton—the statesman of the law."

"The standard of good behavior for the continuance in office of the judicial majesty, is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy, it is an excellent barrier to the despotism of the prince; in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government, to secure a steady, upright and impartial administration of the laws."

"If the courts of justice are to be regarded as the bulwarks of a limited constitution, the argument is strong for the permanent tenure of judicial officers, since nothing will contribute so much as this to that independent spirit in the judges, which must be essential to the faithful performance of so arduous a duty."

"Periodical appointments, however, regulated as they may be, would in some way or other, be fatal to their necessary independence."

B. F. MOORE.

JUDGE LYNN MAKES A MISTAKE.

The Cincinnati Enquirer says that in the lynching of James Shell a few days ago in that State the mob actually murdered an innocent man. Shell told the truth when he requested the farmer thinking he was drawing some water on him, fired at him, and inflicted a wound which may prove fatal."

A deaf and dumb man entered the house of a Texas farmer at night, and not making himself understood he put his hand in his pocket for his knife, on which to write his request. The farmer thinking he was drawing some water on him, fired at him, and inflicted a wound which may prove fatal."

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